IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL REV. APPLICATION NO. 282 OF 2006

Uday Maruti Mane. .. Applicant.

vs.

Chetana Uday Mane & Anr. .. Respondent.

Mr. S.S. Patwardhan for the applicant.

Ms. M.M. Deshmukh, APP., for Respondent.

Coram: J.N. PATEL &,

SMT. R.S. DALVI, JJ.

Date: 5TH APRIL, 2007.

P.C.

. Heard.

2. This revision application is filed by the husband, original non-applicant before the Family Court, impugning the order passed by the Family Court awarding maintenance to the wife in the sum of Rs. 2500/- and to the daughter in the sum of Rs. 2000/- per month from the date of the petition.

3. Initially the parties decided to have divorce by mutual consent but as the applicant-husband did not

conform to the terms on which the divorce by mutual consent was to be obtained, the respondent wife withdrew her consent.

4. The applicant husband took a stand that he is suffering from Aids and that is why he is unable to fulfil his obligation.

5. The Family Court on the application made by the wife for maintenance claimed maintenance for self and her minor daughter who was aged three years on the ground that she is unable to maintain herself and her daughter on being thrown out of the house by her husband. The evidence of the wife is to the effect that her husband has agreed to pay her Rs.77000/- as maintenance for herself and her minor daughter as per the compromise purshis Exh. 14 but deposited only Rs. 5000/- whereas he has sold land to his sister for a sum of Rs.1,30,000/-. The wife has also produced 7 X 12 extract of family land owned by her husband and his two brothers and that the land was sold to his sister. In spite of the husband having sufficient resources to fulfil his commitment he failed to pay a single paisa towards her maintainence and, therefore, the learned Judge of the Family Court passed the impugned order.

6. The only contention raised before us by the learned counsel appearing for the appellant husband is that as the applicant husband is suffering from Aids

and his condition has deteriorated to the extent that he may hardly live for some more time and further that he was unable to pay maintenance as moneys were required for his treatment and,therefore, the Family Court having failed to take into consideration these aspects of the matter, the impugned order deserves to be quashed and set aside.

7. We find that the Family Court has taken into consideration the fact that the husband has thrown out his wife as she protested against alienation of land in favour of his sister and thereafter did not care for her and refused and neglected to maintain her inspite of the fact that he has agreed to do so. Therefore, in the facts and circumstances, we do not find that the Family Court has committed any error on facts and law in passing the impugned order. There is no merit in the revision application. The same is dismissed. No order as to costs.

(J.N. Patel, J.)

(Smt. R.S. Dalvi, J.)